

A. ROLL CALL Chair Robinson called the meeting to order.

Commissioners Present: Leingang, Huber, Mayor Froelich, McLean (via zoom), Smith, Hammond, Robinson. Commissioner Intveld joined the meeting at 5:40 p.m. via zoom.

Commissioners Absent: Mudder, Horn, Buchmiller, Gardner.

B. CONSIDER APPROVAL OF MINUTES

1. *July 22, 2024 Minutes. Commissioner Smith motioned to approve the July 22, 2024 minutes as presented. Commissioner Hammond seconded the motion. Upon vote, the motion passed unanimously.*

C. PUBLIC HEARINGS

1. *Consider a zone change request from CB - Commercial to RH - Residential for Lots 3-5, Block 2, Meadowlands Subdivision*

Staff Recommendation: Planning Staff recommends postponing this request until further details are provided on street connectivity, compliance with relevant codes, and other pertinent information from agencies involved in this project. . City Principal Planner Stromme presented.

STATEMENT/PURPOSE

Meadowlands Park, LLC, is requesting a zone change from CB - Commercial to RH - Residential for Lots 3-5, Block 2, Meadowlands Subdivision.

BACKGROUND/ALTERNATIVES

Request Overview

The Meadowlands Phase 2 project seeks to expand the existing Meadowlands Residential Senior Housing Development in central Mandan. The original development, initiated between 2015 and 2016, is now fully occupied. The initial plan included a mix of detached single-unit residences, manufactured homes, multi-family units, and commercial spaces along Third Street SE and Memorial Highway.

Proposed Changes

The applicant, Barry Jennings, proposed to revise the plan by replacing the multi-family units with additional detached single-unit manufactured homes on Lots 3-5 of the original subdivision, and abandon the previous plan to extend 18th Avenue SE to a connection point with Memorial Highway. This revision represents a departure from the original plan, which required a connection from 18th Avenue SE to Memorial Highway. Without a connection to Memorial Highway, staff may recommend denying further development in Meadowlands.

Access to Memorial Highway is seen as essential for providing redundancy and convenience for residents.

Developmental Proposal

The proposed zone change would allow for approximately thirty (30) detached manufactured housing units on three combined lots, totaling about 8.05 acres. This results in a density of roughly 3.75 units per

acre. The previous multifamily proposal could have potentially doubled this number. Given the central location of the development and its alignment with the original plan, the Planning and Zoning Commission should evaluate the implications of this change. Increasing density within the current footprint may reduce the need for future city expansion.

Property History

Platted in 2015 as Meadowlands Addition, the approved plat included a right-of-way for 18th Avenue SE, extending from Memorial Highway to 3rd Street SE. The initial plan envisioned commercial development along Memorial Highway and Third Street SE with right-in, right-out access due to high traffic volumes. The development's approval heavily relied on this connection to Memorial Highway.

Additional Information and Public Outreach

An application and fee of \$600 was received on May 20, 2024

Nine (9) letters were sent to adjacent property owners on August 8, 2024.

Based on the staff report and findings, Planner Stromme recommended postponing this request until further details are provided on street connectivity, compliance with relevant codes, and other pertinent information from agencies involved in this project. The key factor would be the requested departure from that original master plan connection of 18th Avenue to Memorial Highway. There is not any additional development that can take place in the area until there is secondary access. That is addressed in Section 109.32 in the City Code of Ordinances and also in the Fire Code. The proposed zone change would allow for approximately thirty (30) detached units to be constructed on the property. There are concerns about access to the park that are of concern to the Engineering, Fire, and Planning Departments in the city and the Bismarck Mandan Metropolitan Planning Organization which helps with transportation planning in the region. Planner Stromme noted other issues of concern include:

Outstanding items from Phase 1 need resolution before further development, such as installing street lights on private roads (Section 105-3-10 (10) (f)).

Staff is interested in creating a secondary access route for emergency vehicles and residents of Gateway Park through the original plan for 18th Avenue SE. Improving access to Gateway Park is crucial, given that over 200 housing units currently rely solely on 6th Avenue SE. Gateway Park was developed before modern fire codes, which require secondary access.

If the zone change is approved, a preliminary plat and site plan for the property will be required.

There has been formal opposition received from the Mandan City Engineer, Fire Department, the Planning Department and the Bismarck Mandan MPO. Comments were received from residents voicing concerns with the road connections to Memorial Highway.

Planning Stromme recommended postponing this request as outlined in the factors and details above relative to street connectivity, compliance with relevant codes, and other pertinent information from agencies involved in this project to be completed prior to the city moving forward with this project. The developer provided some feedback.

Commissioner Smith inquired about concerns received from the other departments and agencies involved. Are they only concerned about the connectivity to Memorial Highway? Planner Stromme replied that he could not speak on their behalf, however, they have presented some alternative proposals

that would need additional time to be evaluated by the city. Some key issues of the alternatives was to use the Gateway Park, a separate privately owned park and private street that the city does not maintain or enforce park rules, nor do snow removal for, etc. There is a small area right of way that the city has no maintenance control over and that would be proposed for secondary access in that subdivision which would be consistent with access to private property, private roads to the gate in order to respond to a fire in a subdivision. The city does have total control over a public right of way such as Main Street and Memorial Highway in regards to maintenance and that fire protection would be provided.

Chair Robinson inquired if there were any comments or questions. Hearing none, the public hearing was opened.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for a zone change from CB - Commercial to RH - Residential for Lots 3-5, Block 2, Meadowlands Subdivision.

Barry Jennings, came forward and stated that he is the owner of Meadowlands Park 55 Plus Community and Meadowlands Development. He addressed the following:

Compliance with other agencies. He stated he is complying with agency requests explaining that Meadowlands has engaged with engineers and consultants to review and complete seepage analysis as requested by the Lower Heart. He will work with the US Corp of Engineers and the Lower Heart to address any deficiencies. Planning Department wants to go through and connect to Memorial Highway because it was part of the original Meadowlands masterplan in 2015 and it provides a best practice for community connectivity and it provides a secondary access for emergency vehicles as required by city code. Since the original masterplan was developed nine (9) years ago the situation has changed. That plan envisioned various business projects that would have benefited from Memorial Highway access. Since that time, he stated he has met with developers and potential business partners however none of those opportunities were successful. The Meadowlands Park 55 Plus Community has become a Mandan success story. The 1st Phase is complete and there is a growing waiting list for its 2nd Phase. The city of Mandan has an unmet need for additional senior housing. He said that by doing an expansion and growing it is needed. Meadowlands Management and its residents, as indicated by a letter signed by over fifty-four (54) residents.

Street Connectivity. Neither the residents or management need or want a connection to Memorial Highway. Connecting 3rd Street and Memorial Highway, two of the busiest streets in Mandan would destroy Meadowlands Park by increasing traffic and creating a dangerous situation for senior residents who walk across 18th Avenue. He stated he does not dispute the need for a secondary emergency access road. A proposal was submitted to use south Frontier Trail through Gateway where there already is an emergency access easement. The proposal submitted does meet fire code and they will execute those to meet fire code responsibilities. This provides a safer option for residents and gives Gateway with 205 homes a secondary access road for emergencies. He requested approval of the preliminary plat and zoning change with conditions in order to move forward with sign off from the agencies, the US Corp of Engineers and the Lower Heart.

Chair Robinson inquired if there were any questions for Mr. Jennings.

Commissioner Huber commented that the masterplan was on the record at the time the homeowners would have acquired those properties and moved in to their homes, however, it might be short-sighted in terms of the long-term best interest of Mandan with Memorial Highway slated to be reconstructed in public and private investment that will go into the project and only improving that as a commercial corridor. When this development came through there was anticipation of developing additional commercial properties adjacent to that roadway in a way that made sense for that senior living community. She inquired about his referencing a meeting with developers and potential business partners, stating that she does not recall seeing this listed with a commercial realtor and would like an explanation of the efforts to pursue that original vision for commercial and the multi-family components of that plan. Mr. Jennings replied that he has met with Edgewood about enhancements and building more independent and assisted living opportunities. He has contacted some out of state companies but they were not interested. He said he has approached (not through realtors) individuals who have contacted interested investors without success. He said that it is difficult for him to manage these properties alone and would be interested partnering with someone or any agency. There is idle land and there is a need for more manufactured homes because they are more affordable for residents. Commissioner Huber concurred that this is the easiest path for affordable housing; however, she stated she is not sure it is in Mandan's best interest to put that type of investment next to a major commercial corridor. She stated she is in support of continuing with the vision of the original masterplan for senior living and commercial development, however, she would be reluctant supporting the request for this zone change.

Chair Robinson inquired if there were any further questions or comments. A second invitation was given to come forward to speak for or against the request.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Chair Robinson commented that regarding the Lower Heart that he has spoken with Mr. Jennings and they are working on the process with the Corp of Engineers and the requirements for the levee. The problem is having patience wherein the Corp has up to a year to comment on the presentation.

Commissioner Huber stated that the request for tabling this matter for more time would make sense if it is the position of the Commission that they are open to the zone change request and the rerouting of the road. However, if there is concern about deviation from the masterplan and the best use of that property it may behoove the Commission to consider tabling the matter. Commissioner Smith stated that he is open to the request however, noncommittal indicating he would like a better understanding of the matter.

He concurred with Planner Stromme's suggested motion to postpone this item pursuant to the details outlined above relative to street connectivity, compliance with relevant codes, and other pertinent information from agencies involved in this project to be completed prior to the city moving forward with this project.

Commissioner Smith moved to postpone this request until a future meeting subject to proper noticing requirements. Commissioner Leingang seconded.

Mr. Jennings requested the Planning and Zoning Commission provide him with guidance as to next steps in resolving any questions or issues. Chair Robinson deferred to Planner Stromme who spoke to the pre-planning process with the city. He stated that he is aware that it is a process with the Lower Heart although no guarantee but is likely the Lower Heart will address it. Commissioner Huber commented that she spoke to the land use and zoning. Mr. Jennings stated he would like to know the opinion of the other commissioners on that point. He inquired if any of the commissioners have been to the area and if not, he encouraged them to go and speak to the residents to get their perspective as to expanding homes in that area.

Chair Robinson called for a roll call vote: Leingang: Yes; Huber: No; Froelich: Yes; Intveld: Yes; McLean Yes; Smith: Yes; Hammond: Yes; Robinson: Yes. The motion passed.

2. Consider a final plat and PUD Amendment for Shores at Lakewood 2nd Addition

Staff Recommendation: Planning staff recommends approval of the final plat and PUD Amendment for Shores at Lakewood 2nd Addition.. City Planner Stromme presented.

STATEMENT/PURPOSE

TRX Developers, LLC, is requesting approval of a final plat and a PUD Amendment for Shores at Lakewood 2nd Addition. The PUD Amendment would be applied to Phase 2, and future phases 3 and 4 of the development.

BACKGROUND/ALTERNATIVES

Overview of Request

TRX Developers seeks approval for the final plat of Shores at Lakewood 2nd Addition, a 47.06-acre residential development comprising 103 lots in southeast Mandan. The development will include new City streets, 99 residential lots, two private park properties, a new City lift station, and a stormwater / amenity pond. This request also includes an amendment to the Shores at Lakewood PUD to integrate additional details from the developer's PUD narrative and master plan. Key updates since the original submission include:

- The proposed addition of three-unit "Mansionettes."
- Additional details on various components of the master planned development.

This development will have two means of egress. The principle vehicular access will come from McKenzie Drive SE. Secondary access is to be provided from the extended Oxbow Trail SE (which turns into 39th Avenue SE) and has connection options to 40th Avenue SE. Future access to the development from the west is planned via a McKenzie Drive bridge across the Heart River. Timing of that bridge to be constructed is unknown.

Property History

The Shores at Lakewood Phase 2 plat initially included 126 lots; however, they were reduced to 103 in 2024. The development concept was first introduced in 2018 with Phase 1 under development since 2022. Significant reviews were conducted with USACE and the Lower Heart Water Resource District. The Preliminary Plat received approval in June 2024, and outstanding issues such as utility servicing, lot access, and the proposed irrigation system have been addressed. In early 2024, a portion of excess right-of-way south of McKenzie Drive SE was requested and approved to be vacated. That is where lots 56-62 are located.

Final Plat

The final plat encompasses 47.06 acres and includes 103 lots divided into three (3) blocks.

Key features are:

- Lot 37, Block 2, designated for stormwater/amenity pond/wetland.
- Lots 34-62 will be accessed via a shared private street, for which the City of Mandan will not be responsible for maintenance, including snow removal, street sweeping, or reconstruction.
- ~ A thirty-foot easement from Clear Creek Loop will provide access to all lots.
- ~ The private street will require a name, particularly for units with access/frontage.
- ~ Lots 56-62 may potentially be addressed to McKenzie Drive SE.
 - The plat includes numerous easements for public utilities, stormwater conveyance, and lot access.
 - An easement for a subdivision monument sign is designated on Lot 51, Block 1.
 - The City's lift station will be situated on Lot 63, Block 1.
 - A private dog park is planned for Lot 56, Block 1, and a private park for Lot 35, Block 2.

The City of Mandan and Mandan Park District are not likely to dedicate resources towards enforcing park usage. The HOA may take measures it desires to regulate who uses the parks.

Planned Unit Development (PUD) Amendment

Lots in this addition will be zoned PUD with a basis in R7, R3.2, and RM.

- Lots 2-11 and 56-63, Block 1, Lots 1-12 and 20-35, and Lot 37, Block 2, and Lots 1-3, Block 3 – PUD / RY Residential
- Lots 12-55, Block 1 and Lots 13-19, Block 2 - PUD / R3.2 Residential
- Lot 1, Block 1 and Lot 36, Block 2 - PUD / RM Residential.

The Shores at Lakewood PUD is proposed for amendment to include:

- Three-unit "Mansionette" homes on Lot 1, Block 1 and Lot 36, Block 2.
- The homes would be based in the City's RM - Residential district standards.

These lots are adjacent to the planned City lift station and neighborhood/HOA park. The design will ensure that the homes are oriented to enhance the public realm. City Staff recommended that homes along McKenzie Drive, while not having driveways directly onto the street, should feature front doors/porches and sidewalks leading to McKenzie Drive. This design approach aligns with urban design best practices and creates a nice appearance along the major streets. The amendment will integrate additional elements from the PUD Narrative into the PUD Ordinance, applying to Phase 2 and future phases of the development. Ordinances for Phases 3 and 4 will be drafted when those phases are introduced, as an ordinance cannot be recorded against legal descriptions that are not yet established until a future plat. This also prevents potential PUD issues if a future phase needs to be treated in a unique manner.

The following lots need to be assigned a zoning designation, even though they will not be used for

housing development: Lot 56, Block 1; Lot 63, Block 1; and Lots 35 and 37, Block 2. These lots will be designated for HOA park property, a city lift station, and a storm water/amenity pond. Staff recommended zoning them according to the adjacent zoning classifications.

Staff Comments• Planning Department Staff understands that the utility servicing plan concerns for this subdivision have been resolved, and will include the construction of a new lift station, with the developer also responsible for upgrading an existing downstream lift station. This approach is seen as a positive step toward addressing the utility servicing needs, given the opportunity to enhance both capacity and condition at the downstream station.

- Before the plat can be recorded, a new development agreement for all of Shores at Lakewood is to be drafted and established, to include various topics, and staff will require written confirmation and agreements for relocating the existing public, City-ran grass dump sites from the vacated right of way on McKenzie Drive SE. The new, long-term location for Southeast Mandan's leaf and grass collection will be in the northwest corner of Mandan's Waste Water Treatment Plant.

- There will be no private irrigation lines crossing the City of Mandan Right-of-Way, following denial of that request by the City Commission on August 6, 2024.

- The city has been recommended to explore ways to integrate different forms of housing, such as three-unit structures, into different areas, as part of recommendations to ensure a variety of housing types in different parts of the community for residents with different needs. Staff feels that the proposed home character adheres well to the homes originally approved for this PUD.

Adjacent Properties Zoning, Land Use and Future Land Use

Phase I to the north of this property is zoned PUD (Planned Unit development). The Heart River is to the west. The property to the east and south is zoned agriculture and is the City's Waste Water Treatment Plan. The Future Land Use Plan designates the property as Low Density Residential, and was amended to that designation based on the Shores at Lakewood masterplan/PUD narrative. McKenzie Drive is slated to continue to the west via a future Heart River crossing that would lead to a connection with ND Highway 1806 and south Mandan's Plainview Area.

Additional Information and Public Outreach

- The Application and fee of \$1,450 was received on July 25 and August 7, 2024.
- Letters were sent to eighty-one (81) adjacent property owners on August 8, 2024.

Findings of Fact

Final Plat

1. All technical requirements for approval of a final plat have been met;
2. The final plat generally conforms to the preliminary plat for the proposed subdivision that was approved by the Planning and Zoning Commission;
3. The proposed subdivision generally demonstrates an ability for the property to align with the Future Land Use Plan and other plans and studies;
4. The proposed subdivision, as developed according to the City's Floodplain Ordinance, is not located in a Special Flood Hazard Area or an area where the proposed development would adversely impact water quality and/or environmentally sensitive lands, or areas that are topographically unsuited for development;
5. The proposed subdivision is consistent with the general intent and purpose of the zoning ordinance;
6. The proposed subdivision is generally consistent with the master plan, other adopted plans, policies and accepted planning practice; and
7. The proposed subdivision would not adversely affect the public health, safety, and general welfare.

Zone Change/PUD Amendment

1. The City of Mandan and other agencies would be able to provide necessary public services, facilities, and programs to serve the development allowed by this zone change, provided infrastructure upgrades, agreed to by the Developer, are made.
2. The proposed zoning change is consistent with the general intent and purpose of the zoning ordinance;
3. The proposed zoning change is consistent with the Future Land Use Plan, other adopted plans and policies, and accepted planning practice;
4. The proposed zoning change would not adversely affect public health, safety and general welfare.

Planner Stromme stated that the Planning Department staff recommended approval of the final plat and PUD Amendment for Shores at Lakewood 2nd Addition.

Chair Robinson inquired if there were any comments or questions.

Commissioner Smith inquired where the grass dump would be and Planner Stromme indicated on the map its planned location, near the waste water treatment plant.

Commissioner Intveld stated he is in support of the development and requested clarification what street connects to Oxbow Trail? Planner Stromme stated that 39th where Edgewood is located will turn into Oxbow Trail that connects to McKenzie Drive arterial road network and also via 29th will go to 40th.

Chair Robinson inquired if there were any comments or questions. Hearing none, the public hearing was opened.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for approval of the final plat and PUD Amendment for Shores at Lakewood 2nd Addition. A second invitation was given to come forward to speak for or against the request.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Commissioner Huber moved to recommend approval of the final plat and PUD Amendment for Shores at Lakewood 2nd Addition. Commissioner Froelich seconded. Upon vote, the motion passed unanimously.

3. *Consider a variance for Lot 1, Block 1, Bridgeview Bay Addition*

Staff Recommendation: Planning Staff recommends review of the request and findings of fact, consideration of the statement of hardship and potential identification of a hardship, and modifying or accepting Staff's findings of fact as necessary to support the motion of the board..

City Principal Planner Stromme presented.

STATEMENT/PURPOSE:

Monte Gawryluk is requesting a variance to Section 105-4-6 of the City Code of Ordinances related to the buffer requirements in the Gateway Overlay district.

BACKGROUND/ALTERNATIVES

Overview of Request

Monte and Lynette Gawryluk are requesting a variance to reduce the required buffer points from 6 to 3 for their proposed multi-use shop development, Missouri Point Shop Condos, located in the Bridgeview Bay area of southeast Mandan. The property, Lot 1, Block 1, Bridgeview Bay Addition, is situated in Section 6, Township 138N, Range 80W, City of Mandan, Morton County, North Dakota, along the Missouri River at the eastern end of McKenzie Drive SE. Of note: the special use permit for this project has not been granted, as it has not been to the City Commission. The project was not able to be forwarded to the city Commission in July due to it not adhering to the City Code of Ordinances for buffering and screening and other outstanding items. The permit may be forwarded to the city Commission in the future because of this request. Until then, no construction may take Place.

Property History

City staff is aware, the property has remained undeveloped, while surrounding properties have been developed since the late 1970s and 1980s. The most recent re-platting occurred in 2004, and the property has been zoned as CB – Commercial District since 2000 (Ord. 909). In May 2024, an application for Multi-Use Shops was presented to the Planning and Zoning Commission. Staff recommended denying the request based on best planning practices and the City's adopted plans. However, the Planning and Zoning Commission chose to approve the request, regardless of the stated misalignment with plans and practices. Significant concerns exist regarding how the multi-tenant facility will remain coordinated and considerate of neighboring developments.

Request Overview:

The Gawryluk's request is to construct multi-use shops. The Planning Commission granted a Special Use Permit on May 2024 for the project. Unable to adhere to the full buffer yard requirement their project requires given the noncomplementary land uses, they now are requesting a zoning variance to reduce the required screening and buffer yard from the adjacent, established single-unit residence on an R7 parcel from six (6) points to three (3) points. The applicant seeks permission to use two rows of conifer trees and a fence as the full buffer proposed.

Staff Comments

- The Planning and Zoning Commission should carefully assess whether the lot's physical characteristics warrant a variance from the city code for developing multi-use shops. It has been communicated that multiple aspects of the property were not fully considered at the time of purchase, and this does not constitute a hardship. These aspects include the lack of support for such a use in the City's land use plan,

existing easements, required buffers, and other standards.

- Planning Staff recommended that the Commission evaluate the property's waterfront nature in the same manner as any other property with adjacent uses or buildings next to it. The property is a flat, square lot with high visibility due to its location at McKenzie and Marina and along the Bismarck Expressway, with thousands of vehicles passing by daily.
- The property's visibility will increase once developed and structures are erected.
 - ~ Currently, the property is somewhat obscured by vehicles and equipment parked in the lot in front of it, but once 20+ foot tall buildings are constructed, the property will be very prominent.
 - ~ Traffic counts at neighboring intersections are comparable to other areas where higher standards have been enforced and those counts are expected to increase further when McKenzie crosses the Heart River. The Bismarck Expressway experiences nearly 20,000 vehicles per day, making the property visible from this major route.~ The Board should consider how long-term planning could be affected by a short-term decision to relieve the applicants.
- Additionally, staff recognizes that multi-use developments often involve various uncoordinated land uses. The proposed multi-use shops do not specifically need to be on this property; the preference is due to the property's access to the Missouri River. However, this preference is unlikely to offer significant public benefit, and any potential screening on the site would be advisable to mitigate likely negative externalities.

The P & Z Commission should be reminded that cost or financial burden is not considered a hardship under zoning guidelines. If the project cannot proceed without specific allowances, that is not a valid reason for granting a variance.

Staff advised the applicant's representative on July 30, 2024: "The Board is not able to grant variances for any reason other than an exceptionally irregular, narrow, shallow, or steep lot or other exceptional physical or topographical condition. I would make sure you provide a statement detailing how you feel one of those conditions is present given the flat, rectangular nature of the property in question." Staff would also affirm that information such as the grounds for when a variance can or cannot be granted are accessible on a self-serve manner from the City's website and contained within its ordinances. Regardless of the level of clarity given from Staff to the applicant, this is public information that is readily available online.

Staff would also reference that a variance, when granted, should be considerate of ways to mitigate negative externalities. Often, screened landscaping or buffer yards are what are used to do this. The proposed use of Moffat Juniper as screening will potentially grow 12' tall, and the proposed shop condos would be 28 to 30' tall. The proposed screening is inadequate if true buffering and screening are to be required by this project.

Adjacent Properties Zoning, Land Use and Future Land Use

Current and proposed zoning is CB - Commercial and the property is within the Gateway Overlay district.

Adjacent properties to the north are zoned RM – Residential and CB – Commercial and consist of a marina and restaurant. To the west the property is a CB – Commercial zoned marine sales dealership and to the southwest an RM – Residential zoned multifamily residential development. To the south, there are single-family homes zoned R7 – Residential. The property is immediately on the west bank of the Missouri River.

The City's Future Land Use Plan recommended commercial development on this property. The proposed land uses have been declared to be commercial and personal recreation/storage.

Additional Information and Public Outreach

An application and fee of \$400 was received on July 26, 2024.

Letters were sent to six (6) adjacent property owners.

Staff has received phone calls with concerns regarding the request. An email was sent to the Planning Commissioners regarding concerns with this request.

Findings of Fact

Zoning Variance

1. The need for a variance is not based on special circumstances or conditions unique to the specific parcel of land involved that are not generally applicable to other properties in this area or within the CB - Commercial / Gateway Overlay districts.
2. The hardship is not caused by the provisions of the Zoning Ordinance.
3. Strict application of the provisions of the Zoning Ordinance would not deprive the property owner of the reasonable use of the property.
4. The requested variance is not the minimum variance that would accomplish the relief sought by the applicant.
5. The granting of the variance is not in harmony with the general purposes and intent of the Zoning Ordinance.

Planning Staff recommended review of the water front nature, the request and findings of fact, consideration of the statement of hardship and potential identification of a hardship, and modifying or accepting staff's findings of fact as necessary to support the motion of the board. Given that the cost of the project has been a stated reason for the variance to be granted, and the city's publicly available code of ordinances stating that cost is not a reason a variance can be granted; staff would not recommend granting the variance for this project on the outline presented.

Commissioner Smith commented that he made two visits to the property. He inquired about the calculation of the buffer points. The Ordinance states 25 ft. between buildings. When looking at the plat it is 80 to 98 feet between buildings. Obviously, the intent was they did not want buildings close together.

Planner Stromme explained the thought process. The open space between the buildings is used as a parking lot that would not constitute a buffer. They are proposing a building to be constructed that requires a buffer of six (6) points between it and the adjoining R7 lot about 10-15 feet from the property line. Commissioner Smith stated that this provision does not explain anything. Planner Stromme stated that he would count open space in the middle of a property. Commissioner Smith inquired what about the space on the buffer side between the two buildings that have open space and should one be a point?

Planner Stromme commented that he would disagree. When viewing the site plan open space, a parking lot cannot be a buffer for the building because it is not on the side of the building that needs to be buffered. He said there are a few ways this property can be developed under the Code of Ordinances wherein the proposed layout could be a potential issue depending on the building's location.

Commissioner Smith commented that caution be taken with consideration being noted that the property is commercially zoned given the many things involved in this matter. Careful consideration should be given as to what goes in there that are permitted, including auto, truck, motorcycle, construction equipment, farm sales, service, leasing and rentals, etc. that are permitted uses that could be put there and there would nothing the city could do about it. Planner Stromme indicated that staff's concern would be

the special use permit and the lack of permitting the city's land use plan.

Chair Robinson inquired if there were any comments or questions for Planner Stromme. Chair Robinson inquired if there were any comments or questions. Hearing none, the public hearing was opened.

B. Open Public Hearing

Chair Robinson opened the public hearing and invited anyone calling in or present, to come forward to speak for or against the request for a variance for Lot 1, Block 1, Bridgeview Bay Addition.

Wade Vogel came forward and stated he is representing the Gawryluk's (developers) who were unable to be present. He stated he was at the meeting on May 29, 2024 for the Special Use permit which was approved and subsequently this was reviewed on August 13, 2024, by the Mandan Architectural Committee (MARC) who also approved. Previously it was noted to investigate the easement by the Morton County Water Management District and that was completed and there is an agreement with them. Changes included reducing 22 units down to 19 units to accommodate that easement. Conditions of the Memorial Highway Overlay District were reviewed and there is a legal opinion on it. It is believed that the current site plan meets the requirements that are in compliance, however, it was suggested that the applicants request a variance to the buffer yard requirement. The applicants believe they met the requirements. He stated he did not see anything in the Ordinance about height of trees but it did have spacing for trees and they are willing to look at that. He said the Gawryluk's have been doing everything possible to be considerate of the neighbors. The property was previously a boat storage facility that was not producing revenue for the city. This is a nice project; it is not a shop storage condo development rather it is a flex-commercial space. The legal opinion letter addresses property lines and setbacks. That letter has not been shared but is available for review upon request.

Chair Robinson inquired if there were any comments or questions for Mr. Vogel.

Ramona Furlong came forward to speak against the request for a variance. She stated that she and her husband are adjacent property owners to the south of the property. She stated they submitted a letter opposing approval of the variance that outlines their reasons for the opposition. She said there is nothing wrong with that lot that requires a variance for the Gawryluk's to build their flex condos. The Gawryluk's told them that if they do not get to build enough units on the lot then they will not get a return on their investment. As mentioned, economics is not a reason to grant a variance. The Gawryluk's told them they did not do any due diligence on the lot before they bought it and that they were not aware of the easements. Ramona stated that when they purchased in 2010, they knew the lot was zoned commercial and the buffer would provide protection for them. They are relying on the city Ordinance to protect their property. They requested that the variance be denied.

Mr. Vogel came forward again and stated that he wanted to point out a couple things, in particular, the Gawryluk's changed the look of the buildings. He stated that he does not believe changes were made to a point that would disrupt anything rather it was thought improvements were made due to reducing from 22 units down to 19 units. His interpretation of the juniper size was at a minimum of six feet high which was information they obtained from a person in the tree business. They will revisit that issue in order to make it right.

Tim Furlong came forward and stated he owns the property south of the Gawryluk property. He addressed Commissioner Smith's calculations of the lot and why that may be a hardship. Prior to this, two owners ago, he anticipated purchasing this property. He does not consider any calculation or any type of hardship for these lots, because when one spends that amount of money, one should do their due diligence. When he bought his consulted the city about the overlay zone and he was told that he would be protected by this buffer. At that time, he was told he would be required to have the six (6) points to complete the project. There was a previous project here several years ago and that project did not move forward because of the buffer. Everyone was expected to complete the six (6) points. He does not believe there is any hardship that would allow for the requested variance. The overlay district passed in 2006 was done to protect this type of situation.

Les Kern came forward to speak and stated he was a previous owner of the now Gawryluk property, having owned 10% of it. He said the proposal at that time was to construct a 3-story condo unit in with a bar and restaurant and that was approved at a City Commission meeting but they decided not to build it. That request was never turned down. The six (6) point buffer was never brought up. The building they had in mind to construct would have cost more than a million dollars than they thought it would be so the project at that time did not go forward. Commissioner Huber stated she recalled that project and she thought that the "use" may have been approved but she was not clear if it got to the point that a building permit was applied for at that time. Mr. Kern stated that it was approved. Chair Robinson inquired if there were any comments or questions.

Commissioner Huber stated that she would like to comment to both parties encouraging the parties to agree to a compromise to lessen the dissatisfaction of the outcome of the results. For example, could there be an agreement between the parties to lower the six (6) points that would allow both parties to be reasonably content with the outcome.

Ramona Furlong approached the podium and stated that whatever project Mr. Kern was referring to, she believes was never approved. She said she has had many conversations with the Gawryluk's but she is not confident they will follow through with anything; and she would like to see something in writing addressing the issues so the Gawryluk's cannot back out.

Tim Furlong came forward and reported on the context of conversations with the Gawryluk's about purchasing one of the two buildings facing the river (north and south) for privacy purposes, wherein at one time they agreed to selling him the building closest to his property but then the Gawryluk's backed out. He said he is willing to compromise to come up with a reasonable solution, however, he does not want to see the neighborhood disrupted that would affect the neighbors who bought their properties knowing they would be afforded privacy.

Chair Robinson intervened and stated that the price of the property is not of concern to the Planning and Zoning Commission.

Planner Stromme stated that the request based on cost to grant a variance, he would not recommend that this Board motion to approve this variance. He said he did not include comments in his staff report regarding the use of neighboring units as a buffer, however, ordinances are a trickle-down effect. Section 101.14 4(b) states that no yard or open space on one lot shall be considered as a yard or open space for building on another lot. It is intended for other regulations in the ordinance to be applied with that

trickling down. He did not request a formal opinion on the conflicts it has between the required buffer language. A variance cannot be based off cost and the Ordinance does stipulate that its regulation falls on the property.

Mr. Vogel stated that regarding Ordinances, CB Commercial district section 105-3-12 @ No. 8, references side yards stating that no side yards shall be required of any principle non residential building in a CB district. This is a CB district. Planner Stromme clarified that section does not pertain to this matter because there is a buffer required on this property pursuant to the Gateway. The Gateway is an overlay that overlays any underlining zoning.

The city would not approve a setback on a property that required buffering and screening per the Gateway.

Chair Robinson inquired if there were any final comments or questions.

C. Close Public Hearing

Chair Robinson inquired if there were any comments or questions. Hearing none, this portion of the public hearing was closed.

D. Commission Action

Chair Robinson inquired if there were any further comments or questions from members of the Planning and Zoning Commission.

Commissioner Smith encouraged the parties to come to a resolution. Chair Robinson stated that if the neighbors get a unit that would be okay, and if they don't that would be okay too. Planner Stromme recommended the parties create a solution that would uphold the buffer requirement in a more perpetual manner that does not require coordination efforts to meet the requirement. The goal of the Commission is to decide to grant the variance or deny the variance. Chair Robinson inquired of Planner Stromme that if the variance is denied by the Commission, can the applicants reapply with a different plan? Planner Stromme replied that is correct and he believes the only "Final Denial" will be determined by the City Commission. It is possible that any recommendation made tonight would have to be carried to the City Commission, however, he will check on the next step. Hence, it is possible that a decision to deny the request would be final by this Board, and that he is required to take that recommendation to the City Commission. If they were to make that decision to deny it, it could be "final-final" and the City Code would not allow this project to pursue an avenue for relief. It would be considered as "the end."

Commissioner Huber inquired of Chair Robinson if there is a third option along the lines of postponing or tabling this matter to allow the parties opportunities for additional conversation? And either postpone indefinitely and bring it back to the next meeting or tabling it until such time as they signify, they have reached compromise and then bring it back? Planner Stromme replied that is a possible option stating that the soonest it could come back would be the October Planning and Zoning Commission meeting due to notice deadlines that would not meet the timeframe of the September meeting. However, he is not clear how re-introducing this item will fully work, basically due to limited spacing for building within that area. Commissioner Huber and Commissioner Smith agreed to postpone at this time rather than deny the

request. Chair Robinson concurred and based upon the testimony; it appears there may be an opportunity for the parties to work out an agreed upon resolution. Planner Stromme stated he believes the variance would have to come back with a vetted hardship supporting the request and reiterated that this Board cannot grant a variance due to project costs. If it comes back that it is providing relief under the Code of Ordinances because they cannot afford it, the Commission cannot grant it.

Commissioner Huber moved to postpone this matter until the next meeting until it can properly and legally be noticed for a variance for Lot 1, Block 1, Bridgeview Bay Addition. Commissioner Intveld seconded the motion. Upon vote, the motion passed unanimously.

D. OTHER BUSINESS

1. *Updates and Q&A on Zoning Rewrite Study.* City Principal Planner Stromme reported there was an open house on Monday, August 19, 2024 for the public to hear about the zoning updates of the Zoning Study. There was also a workshop held that day also. The agenda consisted of:

RR - Rural Residential~ R7, R4, R3.2 and RM Residential; Eliminated R12

~ MA, MB, MC and MD Industrial Districts

~ Commercial Districts Standardization

~ Downtown Districts; Reduction DF

~ Planned Unit Development

~ Future Zoning Map – Six (6) changes noted

~ Summary of Changes:

Group DwellingsRetail Group A, B

Service Group B

Office-Bank Group

Commercial Rec. Group

Wholesale Group

Health-Medical Group move to the office-bank group

General Farming

Industrial Group B

Religion Groups renamed to Assembly group, schools, etc.

Truck Farming Group Use Group Elimination integrated with General Farming

Shop Condos

Self-Storage

Subdivision and Design Standard

Survey Results and Actions

Implementation Process: Code, Adopt, Implement

(2) Zoning Map Changes; (3) Use Table changes; (4) Chapter 109; (5) Survey Results; (6) Shop Condos; (7) Self Storage.

Planner Stromme stated that the most important revision will be the organization of the regulations defined in their respective chapters. There is a contractual completion date of January 1, 2025, subject to

negotiations, if any.

E. ADJOURN

There being no further business to discuss or come before the Board, Commissioner Smith motioned to adjourn the meeting. Commissioner Hammond seconded. Upon vote, the motion passed unanimously.

The meeting adjourned at 7:46 p.m.